

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)	Art Unit: 1651
)	
EISENBACH, et al.)	Examiner: GOUGH, T.
)	
Serial No.: 10/573,412)	Washington, D.C.
)	
Filed: August 18, 2008)	July 20, 2011
)	
For: APPARATUS AND METHODS)	Docket No.: EISENBACH=5
FOR SELECTING)	
CAPACITATED...)	Confirmation No.: 2954

ELECTION WITH TRAVERSE

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S i r :

In response to the restriction requirement mailed June 22, please enter the following elections and remarks.

1. Applicants elect group I (apparatus) with traverse.
2. The restriction is traversed on the ground that on even date herewith, the group II method claims have been amended to recite that the subpopulation of spermatozoa enriched with capacitated spermatozoa is selected, or evaluated, using the apparatus of claim 1.

Under PCT Administrative Instructions, Annex B, paragraph (e) there is unity between an apparatus and a process using that apparatus.

While the examiner asserts that the apparatus is known in the art, citing the Bahat article in Nature Medicine 2003, the examiner fails to explain where in that article the apparatus is allegedly taught, and how that teaching reads on the claimed apparatus (and thus, whether the teaching allegedly establishes anticipation or only obviousness). Thus, the showing of a posteriori lack of unity is at least procedurally inadequate.